IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2904, 2908, 2909 & 2912 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DEVSI JASA

Appearance:

Mr Samir Dave, AGP for Petitioners

Mr K L Dave, for respondents

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 09/02/2001

C A V (COMMON) JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

This is a group of 4 Appeals under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act'), challenging the common judgment and award dated 17.8.1987 recorded by the learned Joint District Judge, Junagadh in Land Reference Case No.586, 590, 591 and 594/88. In fact, the learned Judge has disposed of a group of Land Reference Cases being No. 538 to 594 of 1988 along with 350/88 & 351/88. This group of matter has been separated for the purpose of this appeal since it involves the question of limitation.

2. The facts may be briefly stated as follows:

The land in question belonging to the respondent above named was required for the public purpose namely; Machhundari Irrigation Scheme. Therefore, the Land Acquisition Officer undertook the required process by issuing notification under section 4(1) of the Act, which was published in the Government Gazette. The Land Acquisition Officer has undertaken necessary process and at the completion of the process, an award was made in the aforesaid matter in LAC. No.1/86 on 17.8.1987. It appears from the record that the respondents were served with notice under section 12(2) of the Act. The respondents-above named felt dissatisfied by the aforesaid award of the Land Acquisition Officer and had filed applications under Section 18 of the Act on 18.1.1988 requiring the Land Acquisition Officer to refer the said applications to the District Court, Junagadh. Accordingly the applications were referred to the District Court. It appears that the Land Acquisition Officer has granted compensation in terms of the said award. The respondents felt that the compensation awarded was too low and therefore, the aforesaid applications were submitted by them for referring the matters to the District Court under Section 18 of the Act. As said above, the Collector referred the matters to the District Court and the matters were registered as Land Reference Cases as mentioned above.

3. Notices were issued to the present appellants. They appeared before the Reference Court and filed objections-cum-written statement. There, they contended that the compensation awarded is just and adequate and, therefore, there is no need to increase the amount of compensation. They also contended that the present respondents were served with notice under section 12(2) of the Act and they did not file the application for reference under Section 18 of the Act to the Collector within six weeks from the date of receipt of notice. The appellants contended that the references were otherwise

also time barred and, therefore, they could not be entertained. Necessary issues were framed by the learned Judge at Exh.9. After recording evidence and considering the evidence and arguments before the him, the learned Judge found that the compensation awarded by the Land Acquisition Officer was on lower side and, therefore, the learned Judge passed judgment and award holding that the respondents were entitled to higher amount of compensation as indicated in his judgment and award. At the same time, the learned Judge also found that all the references were filed within limitation and, therefore, he negatived the said contention of the appellants.

4. Feeling aggrieved by the said judgment and award of the learned trial Judge, the appellants abovenamed have preferred this group of appeal before this Court under Section 54 of the Act read with section 96 of the Code of Civil Procedure, 1908. It has been mainly contended here that the learned Judge has erred in holding that the references were filed within limitation. That the learned Judge has also erred in holding that the compensation awarded is on lower side. That the learned Judge has erred in enhancing the amount of compensation. That on the whole the judgments and awards of the Reference Court are illegal and erroneous and deserve to be quashed and set aside. The appellants, have, therefore, prayed that the present appeals be allowed, the impugned judgment and awards of the Reference Court be set aside and that the application for reference filed by the respondents be dismissed with costs all throughout.

5. At the admission stage, notice was issued to the other side. Mr K L Dave, learned Advocate appeared on behalf of the respondent whereas Mr Samir Dave, learned AGP appeared for the appellants. we have heard the learned Advocates for the parties and we have been taken through the Records and Proceedings including oral evidence as well as documentary evidence by both the learned Advocates. During the course of arguments, it was found that there was substance and force in the arguments of the appellants that the references were time barred and, therefore, they restricted their arguments to the point of limitation and that was the only issue argued by them before us. In view of the aforesaid position, we do not touch the merits of the case and should restrict the decision only on the point of limitation. Since the learned Advocates for the parties have restricted their arguments only on the issue of limitation and since they did not address us on other aspects of the case and since the learned Advocates

requested us to restrict our findings only on the issue of limitation, we restrict our findings and decision only on the point of limitation.

6. On appreciation of evidence and arguments, we are of the decision that the application for reference was time barred considering the provisions of section 18 read with section 12(2) of the Act and therefore, we find that the learned Judge has seriously erred in holding that the applications for reference were filed within limitation. Reasons for the aforesaid findings are as follows:

7. A perusal of the reference application submitted by the respondents, it is apparently clear that these reference applications were filed by the respondents before the Collector on 18.1.1988. This date has been indicated in the application itself by the learned Advocate for the respondent appearing before the Reference Court. There he has positively stated that the respondents has received notice under section 12(2) of the Act. It appears from the original application at Exh.1 that the respondents have stated in para 1 of the application that they had received the notice under section 12(2) of the Act on or about 31.12.1987. This would mean that the respondents have admitted the service of notices under Section 12(2) of the Act and they have further contended that they have received the said notice on or about the said date. As against this, the appellants have contended that the notice issued under Section 12(2) dated 8.9.1987 were actually served upon the respondents concerned on 24.9.1987. Therefore, there is some dispute about the date of service of notice under Section 12(2) between the parties.

8. As said above, the appellants have taken up the contention about the limitation. There is an issue about the limitation raised by the Reference Court, and there is no dispute between the parties regarding the same. This would show that there was pleading having contention of limitation. Then there was an issue relating to limitation framed by the reference court. The parties were aware of the position. Admittedly, the Reference Court has recorded finding to the effect that the references were within limitation.

9. We can find that along with the forwarding letter, the Collector had sent certain other information to the District Court, along with the application of the respondent under section 18 of the Act, for referring the matter to the District Court. There we find the information at page 33 and 35 which shows that the notice

under section 12(2) of the Act was sent on 8.9.1987 and it was served on 24.9.1987 on the respondent. This document was not in dispute before us when M/s. Dave and Dave, learned Advocates argued the matter on the issue of limitation. This would positively show that the notices under section 12(2) were served upon the respondents on 24.9.1987. It is an admitted position that the respondents had submitted applications for referring the matter under section 18 of the Act on 18.1.1988. Section 18 of the Act clearly states that when the notices have been served under section 12(2) of the Act then the applications for reference is required tobe submitted before the Collector within six weeks from the date of receipt of notice under section 12(2) of the Act. It would be worthwhile to refer and reproduce the said provision of section 12(2) as well as provisions of Section 18 of the Act as follows:

"12(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

"18. Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken,

Provided that every such application shall be made,

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

10. A bare reading of the text of section 12(2) read with section 18 of the Act makes it clear that the application for reference is required to be filed within six weeks from the date of receipt of notice under section 12(2). As said above, the notices were admittedly served on 24.9.1987 on the respondents but the respondents have submitted applications for reference on 18.1.1988. This would clearly show that the reference applications have been filed beyond the period of limitation of six weeks. In fact, these applications were required tobe submitted within six weeks, i.e. on or before 7.11.1987, but they have been submitted 18.1.1988. This clearly shows that these applications were time barred and the Collector should not have referred the matter to the District Court.

11. On going through the judgment and award of the learned Judge, it seems that the finding has been given on the issue of limitation in favor of the respondents, but there appears to be no discussion on the issue as such.

11.1. However, there was evidence before the learned trial Judge to show that these applications were made late and beyond the period of six weeks from the date of receipt of notice under section 12(2) of the Act. Therefore, applications under Section 18 of the Act were clearly time barred.

11.2. For this purpose, we can also refer to other evidence on record. Firstly, there is evidence at page 39 which shows that notices under section 12(2) of the Act was issued on 8.9.1987 and they were served on the respondent on 24.9.1987. This document was shown to us jointly by the learned Advocates for the parties. Both of them have agreed to consider the same. Both of them have relied upon the same and, therefore, once this document is relied upon, then it is evident that notice under section 12(2) were served upon the respondents on 24.9.1987 and in that case, the respondents were required to submit application for reference under Section 18 of the Act within six weeks therefrom. It has not been done and, therefore, the application for reference were clearly time barred.

12. It is to be seen that it is an admitted position that if the application is filed late, then the Collector has no power to condone the delay under Section 5 of the Limitation Act, since the Collector is not found to be a Court for the purpose of section 5 of the Limitation Act.

Then the District Court is equally not competent to condone the delay caused in filing such an application for reference under Section 18 of the Act before the Collector. Therefore, neither the Collector, nor the Reference Court is entitled to condone the delay. There is absolutely no dispute about the proposition of law, between M/s.Dave & Dave appearing for the parties. Then, it is a matter of record that neither the Collector nor the Reference Court has condoned the delay caused in filing the application for Reference under Section 18 of the Act. There is equally, no dispute on this aspect of the case between the learned Advocates for the parties M/s. Dave & Dave.

13. If we turn to the factual aspect of the case, it is an admitted position that the References in the aforesaid matter that the reference was made by the Collector on 18.1.1988 and the notice under section 12(2) of the Act has been served on 24.9.1987 as per the case of the appellants and according to the case of the respondents, the said notice has been served upon the respondents concerned on 31.12.1987. As said above, there is mention by the aforesaid date of receipt of notice under section 12(2) of the Act in the application itself, but there is absolutely no evidence to prove this fact. Then as said above, while sending the said applications to the District Court, the Collector has sent certain accompaniments. One of them is at page 33 onwards which also shows that notice under section 12(2) was issued on 8.9.1987 to the respondents and it was served upon them on 24.9.1987. This document was admitted by M/s.Dave & Dave, and they have taken us through the said document and as a result of the examination of the said document, they have argued that the records show that the notices were served upon the respondents under Section 12(2) on 24.9.1987 and not on 31.12.1987. The appellants have produced material to show that the notices were served upon the respondents under Section 12(2) on 24.9.1987. There is no serious dispute now about the same before us and, therefore, it is clear that the notices were served upon the respondents on 24.9.1987, hence, they are barred by law of limitation prescribed under Section 18 of the Act. It can be gathered from the record that the applications were received by the Collector for reference under Section 18 of the Act on 18.1.1988. This means that though the respondents were served with notices under section 12(2) of the Act on 24.9.1987, the applications for reference were made on 18.1.1988. This shows that the applications for reference were made more than three months after the service of notice under section 12(2) of

the Act. As said above, the dates of service of notice under section 12(2) of the Act have been proved on record and then subsequently admitted during arguments. In the present case, the fact of service of notice under section 12(2) of the Act on the respondents is admitted to be 31.12.1987 in the pleadings. However, the respondents have not produced any evidence or material to prove that fact. Even they did not utter a word on oath during their evidence in support of their case. Therefore, there is a conclusive proof against the respondents. The respondents have not come out with the case that the said fact of service of notice on 24.9.1987 is false. They have not explained anything about the same. They have never disputed even during the course of evidence that the aforesaid date was incorrect.

14. Therefore, on the one hand they have admitted in the applications themselves that the notice under section 12(2) of the Act was served upon them. Then there is further documentary evidence to show that the notices were served upon them on 24.9.1987. Even subsequent document has been admitted and, therefore, we propose to depend upon the said documents with the consent of M/s.Dave & Dave. In that view of the matter, it is clear that the applications for reference under Section 18 of the Act were filed more than three months after service of notice under section 12(2) of the Act as said above. These applications were required to be submitted within six weeks. This has not been done and, therefore, the applications submitted under Section 18 of the Act for reference to the District Court, were all time barred. It is clear that the reference Court has not properly considered this aspect of the case. It appears from the judgment and award of the Reference Court that the Reference Court has found in para 6 of the Judgment that the applications are within limitation. However, the learned Judge of the Reference Court appears to have not discussed the matter. Any way, the aforesaid facts led us to hold that the applications filed by the respondents above named are clearly time-barred and, therefore, the Reference Court could not have entertained the same. The judgment and award of the Reference Court on the basis of the said References are also illegal and erroneous. Since it was noticed that all the four reference applications were time-barred, M/s.Dave & Dave have requested us to dispose of these appeals only on the ground of limitation. They have also requested us not to discuss and record finding on other aspect of the case including the question of quantum of compensation. We also find that the applications under Section 18 of the Act were time barred and, therefore, the Reference

Applications could not have been entertained by the District Court. Therefore, the entire judgments and orders of the Reference Court in these four matters, are illegal and erroneous, and therefore, it is not necessary for us to consider the question of quantum of amount of compensation in these four matters. Therefore, we refrain ourselves from touching that aspect of the case in these four maters.

15. The net result is that these four reference applications were time barred and, therefore, the judgments and awards on the basis on such time barred reference applications are illegal, erroneous and deserve to be set aside.

16. In the result, these four appeals are allowed. The judgments and awards passed by the Reference Court in these matters are quashed and set aside. The reference applications of the respondents above named

matters are ordered to be dismissed. In case any additional amount has been paid to the respondents, they shall refund the said amount to the appellants and the appellants shall be at liberty to recover the same from the appellants concerned. However, considering the facts and circumstances of the case, there shall be no order as to costs. The parties shall bear their own costs in these appeals as well as in the Land Reference Cases before the Reference Court. Office shall draw decree accordingly.

Date:9.2.2001 [M H Kadri, J.]

msp. [D P Buch, J.]